# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 438.

THE UNITED STATES, PETITIONER,

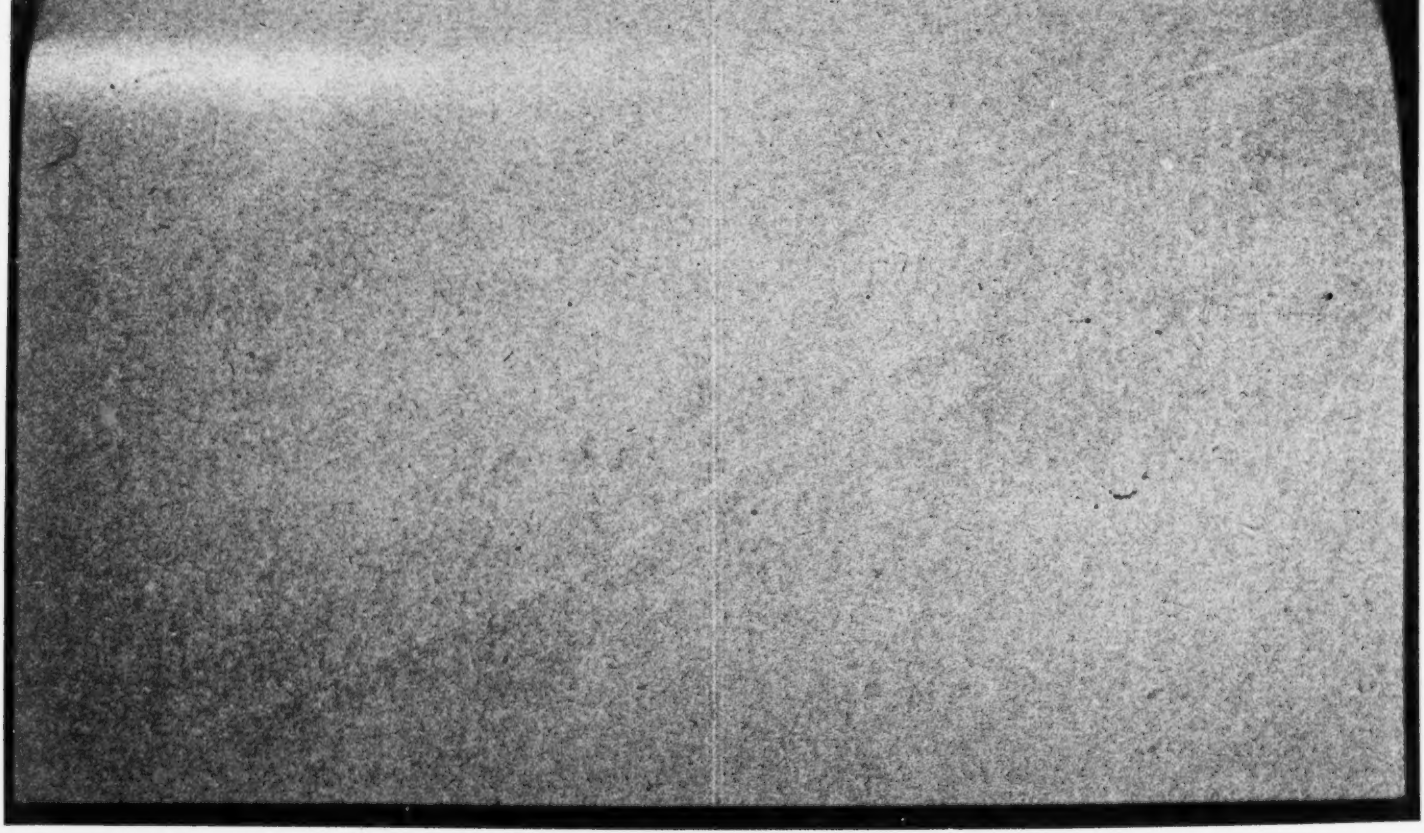
vs.

GEORGE E. CADARR, EDWARD PARKER, JOHN J. KEATING, AND JOHN N. MYERS.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

PETITION FOR CERTIORARI FILED NOVEMBER 23, 1904.
ORDER AS TO RETURN TO CERTIORARI FILED JANUARY 30, 1905.

(19538.)



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18964—05——1

a *Transcript of record.*

Court of appeals, District of Columbia, January term, 1904.

THE UNITED STATES, APPELLANT,
*vs.*
GEORGE E. CADARR, EDWARD PARKER, JOHN J. KEATING, and JOHN N. MYERS.
No. 1325. No. 2, special calendar.

Appeal from the supreme court of the District of Columbia.

Filed May 28, 1903.
Office of the clerk, Supreme Court U. S. Received Nov. 23, 1904.

1 In the court of appeals of the District of Columbia.

THE UNITED STATES, APPELLANT,
*vs.*
GEORGE E. CADARR ET AL.
No. 1325.

Supreme court of the District of Columbia.

UNITED STATES
*vs.*
GEORGE E. CADARR, EDWARD PARKER, JOHN J. KEATING, and JOHN N. MYERS.
No. 22917. Criminal.

UNITED STATES OF AMERICA,
*District of Columbia, ss:*

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed, and proceedings had, in the above-entitled cause, to wit:

*Aff. No. 48879.*

DISTRICT OF COLUMBIA,
*County of Washington, ss.*

*To the marshal of the district of Columbia, greeting:*

Whereas George H. Harries hath, upon oath before us, judges of the police court of the District of Columbia, declared that on the twenty-second day of April, A. D. 1901, at the county and District aforesaid, one George E. Cadarr, Edward Parker, George W. Blair, John J. Keating, and John N. Myers did amongst themselves conspire, combine, confederate, and agree together falsely and fraudulently to cheat and defraud the Washington Traction and Electric Company, a body corporate, of divers large sums of money, and in pursuance of the said unlawful and malicious conspiracy, the said Cadarr, Parker, Blair, Keating, and Myers did obtain from the said Washington Traction and Electric Company one thousand dollars against the form of the statute in such case made and provided, and against the peace and Government of the United States.

You are therefore hereby commanded to take the said Cadarr, Parker, Blair, Keeting, and Myers and bring them before the said police court forthwith to answer said charge.

2 Witness the Hon. Charles F. Scott and the Hon. Ivory G. Kimball, judges of the police court, and the seal of said court this twenty-fourth day of April, A. D. 1901.

[Seal of the police court.]

W. H. RUFF,
*Deputy Clerk Police Court, D. C.*

(Endorsed:) Crim. No. 22917. precinct. No. 117788. United States vs. George E. Cadarr et al. Warrant for conspiracy. Cepi: J. S. Lacey, dep. U. S. M. Apr. 25, 1901. Witnesses: Geo. H. Harries, Evening Star bldg.; Oliver A. Gardener, M. R. R. *R.* Co.; Richard Williams, 1109 M St., S. E.; M. R. Muller, M. P.; Lieut. J. C. Daley, M. P.; C. C. Flather, M. P.; Henry Lacey, M. P.; George W. Boyd, M. P. Filed in open court Apr. 29, 1901. J. R. Young, clerk.

(Endorsed:) April 25", 1901. Plea, not guilty. Each held to await the action of the grand jury. Cadarr, Blair, & Myers committed to jail in default of recognizance in the sum of $1,500 each to appear in the supreme court, D. C., entered in 190 . surety. Filed Apr. 24, 1901. Joseph Y. Potts, clerk police court, D. C. Parker and Keating released on $1,500 each recognizance to appear in the supreme court, D. C., entered into April 27, 1901. Thomas Gray, W. H. Brooker, Bernard Murphy, sureties.

*Recognizance.*

In the police court of the District of Columbia, the 27th day of April, 1901.

THE UNITED STATES *vs.* EDWARD PARKER. } To answer in the supreme court of the District of Columbia.

The defendant and William H. Brooker, his surety, acknowledge themselves to be indebted to the United States in the sum of seven hundred and fifty dollars lawful money of the United States, to be levied of their and each of their goods and chattels, lands and tenements, upon condition, nevertheless, that if the said defendant shall personally appear before the supreme court of the District of Columbia from day to day, at the present and any future criminal term thereof, until the said cause shall *shall* be finally disposed of, and answer the charge of conspiracy against him therein preferred, and shall not depart the court without leave, then this recognizance to be void and of none effect.

W. H. BROOKER.

3 APRIL 27TH, A. D. 1901.

I certify that the above recognizance was acknowledged in open court, the 27th day of April, 1901; and that the sufficiency of said surety was approved by the judge of said police court.

Witness my hand and the seal of said court.

[Seal police court.]

JOSEPH Y. POTTS,
*Clerk Poicle Court, District of Columbia,*

(Endorsed:) Crim. No. 22917. No. 117,788. Police court, District of Columbia. Recognizance to answer in the supreme court. The United States vs. Edward Parker $750. Wm. H. Brooker 415 13 St. S. E. surety. Taken the 27″ day of April, 1901. Joseph Y. Potts, clerk police court, D. C.

POLICE COURT, DISTRICT OF COLUMBIA, *27″ day of April, 1901.*

William H. Brooker surety in the within recognizance, being duly sworn, says that he is worth, over and above all his debts and liabilities the sum of five thousand dollars in real estate, situated in the District of Columbia; that a part of the real property so owned by him is described as follows: Lot 22 square 1018 District of Columbia and is worth the sum of two thousand dollars. That he owns said property in fee simple, free and unincumbered by deed of trust, mortgage, judgment, or otherwise. That he is not surety nor responsible on the bond or recognizance of any person, whatsoever.

W. H. BROOKER.

Witnesses:

_____ _____.

_____ _____.

Subscribed and sworn to before me, this 27″ day of April, 1901.

JOSEPH Y. POTTS,
*Clerk Police Court, District of Columbia.*

*Recognizance.*

In the police court of the District of Columbia, the 27″ Day of April, 1901.

THE UNITED STATES *vs.* EDWARD PARKER. } To answer in the supreme court of the District of Columbia.

The defendant, and Thomas Gray his surety, acknowledge themselves to be indebted to the United States in the sum of seven hundred
4 and fifty dollars, lawful money of the United States, to be levied of their and each of their goods and chattels, lands and tenements, upon condition, nevertheless, that if the said defendant shall personally appear before the supreme court of the District of Columbia from day to day, at the present and any future criminal term thereof, until the said cause shall *shall* be finally disposed of, and answer the charge of conspiracy against him therein preferred, and shall not depart the court without leave, then this recognizance to be void and of none effect.

THOMAS GRAY.

APRIL 27TH, A. D. 1901.

I certify that the above recognizance was acknowledged in open court, the 27″ day of April, 1901; and that the sufficiency of said surety was approved by the judge of said police court. Witness my hand and the seal of said court.

[Seal police court.]

JOSEPH Y. POTTS,
*Clerk Police Court, District of Columbia.*

(Endorsed:) Crim. No. 22917 No. 117,788 Police court, District of Columbia. Recognizance to answer in the supreme court. The United States vs. Edward Parker $750. Thomas Gray surety 1246 1st St. S. W. Taken the 27" day of April 1901. Joseph Y. Potts clerk police court, D. C.

POLICE COURT, DISTRICT OF COLUMBIA, *27" day of April, 1901.*

Thomas Gray surety in the within recognizance, being duly sworn, says that he is worth, over and above all his debts and liabilities the sum of twenty five hundred dollars in real estate, situated in the District of Columbia; that a part of the real property so owned by him is described as follows: Lot 13 square No. 493 District of Columbia and is worth the sum of twenty five hundred dollars. That he owns said property in fee simple, free and unincumbered by deed of trust, mortgage, judgment, or otherwise That he is not surety nor responsible on the bond or recognizance of any person, whatsoever, except two bonds aggregating seven hundred dollars

THOMAS GRAY.

Witnesses:

_____ _____.

_____ _____.

Subscribed and sworn to before me, this 27" day of April, 1901.

JOSEPH Y. POTTS,
*Clerk Police Court, District of Columbia.*

5 *Recognizance.*

In the police court of the District of Columbia, the 27th day of April, 1901.

THE UNITED STATES *vs.* JOHN J. KEATING. } To answer in the supreme court of the District of Columbia.

The defendant and Bernard Murphy, his surety, acknowledge themselves to be indebted to the United States in the sum of fifteen hundred dollars, lawful money of the United States, to be levied of their and each of their goods and chattels, lands and tenements, upon condition, nevertheless, that if the said defendant shall personally appear before the supreme court of the District of Columbia from day to day, at the present and any future criminal term thereof, until the said cause shall *shall* be finally disposed of, and answer the charge of conspiracy against him therein preferred, and shall not depart the court without leave, then this recognizance to be void and of none effect.

BERNARD MURPHY.

APRIL 27TH, A. D. 1901.

I certify that the above recognizance was acknowledged in open court, the 27th day of April, 1901; and that the sufficiency of said surety was approved by the judge of said police court. Witness my hand and the seal of said court.

JOSEPH Y. POTTS,
*Clerk Police Court, District of Columbia.*

(Endorsed:) Crim., No. 22917. No. 117788. Police court, District of Columbia. Recognizance to answer in the supreme court. The United States vs. John J. Keating, 720 Light St., Baltimore, Md. $1,500. Bernard Murphy, surety, 1344 4th St. NW. Taken this 27" day of April, 1901. Joseph Y. Potts, clerk police court, D. C.

POLICE COURT, DISTRICT OF COLUMBIA,
*27" day of April, 1901.*

Bernard Murphy, surety in the within recognizance, being duly sworn, says that he is worth, over and above all his debts and liabilities, the sum of twenty thousand dollars in real estate, situated in the District of Columbia; that a part of the real property so owned by him is described as follows: Premises known as Nos. 402, 404, 406, 408 O street northwest, D. C., and is worth the sum of twelve thousand dollars.
6 That he owns said property in fee simple, free and unincumbered by deed of trust, mortgage, judgment, or otherwise, except a deed of trust of six thousand dollars. That he is not surety nor responsible on the bond or recognizance of any person whatsoever.

BERNARD MURPHY.

Witnesses:

_____ _____

_____ _____

Subscribed and sworn to before me, this 27" day of April, 1901.

[Seal police court.]

JOSEPH Y. POTTS,
*Clerk Police Court, District of Columbia.*

*Recognizance.*

In the supreme court of the District of Columbia, holding a criminal court.

THE UNITED STATES } *vs.* GEORGE W. BLAIR. } Criminal No. 22917. Charge, conspiracy.

The defendant and Union Surety & Guaranty Co. of Philadelphia, Pa., his surety, acknowledge themselves indebted to the United States in the sum of fifteen hundred ($1,500) dollars, to be levied of their and each of their lands and tenements, goods and chattels, if the said defendant fail to appear before this court from day to day at the present and subsequent terms thereof and answer any indictment that may be brought against him, until finally disposed of, or if the said defendant depart the court without leave.

UNION SURETY & GUARANTY CO.
OF PHILADELPHIA, PA.,
By WM. OSCAR ROOME,
*Local V. Prest. and Atty. in Fact.*

Acknowledged in open court before me,
[SEAL.]

J. R. YOUNG, *Clerk.*
By HARVEY GIVEN,
*Assistant Clerk.*

Surety examined and approved by U. S. atty. (Atkins).

(Endorsed:) Criminal court No. one. Criminal, No. 22917. United States vs. George W. Blair, Milestown, St. Mary's Co., Md. Recognizance for appearance of defendant. $1,500. Union Surety & Guaranty Co. of Philadelphia, surety. Acknowledged May 4, 1901.

7 *Recognizance.*

In the supreme court of the District of Columbia, holding a criminal court.

THE UNITED STATES } Criminal No. 22917. Charge, conspiracy.
*vs.*
GEORGE E. CADAAR. }

The defendant and Reuben M. Harlow, his surety, acknowledge themselves indebted to the United States in the sum of fifteen hundred ($1,500) dollars, to be levied of their and each of their lands and tenements, goods and chattels, if the said defendant fail to appear before this court from day to day at the present and subsequent terms thereof, and answer any indictment that may be brought against him; until finally disposed of or if the said defendant depart the court without leave.

Acknowledged in open court before me,

J. R. YOUNG, *Clerk*,
By F. W. SMITH,
*Assistant Clerk.*

Surety examined and approved by U. S. att'y.

(Endorsed:) Criminal court No. one Criminal No. 22917. United States vs. George E. Cadaar #1006 I St. S. E. Recognizance for appearance of defendant. $1,500. Rueben M. Harlow 1134 Park place N. E. surety. Acknowledged May 7, 1901.

*Recognizance.*

In the supreme court of the District of Columbia, holding a criminal court.

THE UNITED STATES } Criminal No. 22917. Charge, conspiracy.
*vs.*
JOHN N. MYERS. }

The defendant and Bernard Murphy, his surety, acknowledge themselves indebted to the United States in the sum of fifteen hundred ($1,500) dollars, to be levied of their and each of their lands and tenements, goods and chattels, if the said defendant fail to appear before this court from day to day at the present and subsequent terms thereof, and answer any indictment that may be brought against him, until finally disposed of or if the said defendant depart the court without leave.

Acknowledged in open court before me,

J. R. YOUNG, *Clerk.*
By F. W. SMITH,
*Assistant Clerk.*

8 Surety examined and approved by U. S. att'y (Bingham).

(Endorsed:) Criminal court No. one Criminal No. 22917. United States vs. John N. Myers 3237 P St. N. W. and No. 8 North Mount St. Balto. Md. Recognizance for appearance of defendant. $1,500. Bernard Murphy, 401 O St. N. W. surety. Acknowledged May 7, 1901.

*Indictment.*

Filed in open court Mar. 31, 1902.

In the supreme court of the District of Columbia, holding a criminal term, January term, A. D. 1902.

DISTRICT OF COLUMBIA, *ss:*

The grand jurors of the United States of America, in and for the District of Columbia aforsaid, upon their oath do present:

That at the time of the commission by them of the offense hereinafter mentioned, one George E. Cadaar, one Edward Parker, one John J. Keating and one John N. Myers, all late of the District aforesaid, were employees at the District aforesaid, of the Metropolitan Railroad Company, a body corporate, operating certain lines of street railway in said District; the said Cadaar being then and there in such employ as an engineer at the car-house of said body corporate at said District, and having then and there as such engineer charge of a certain furnace in the said car-house then and there being; and the said Parker, the said Keating and the said Myers being then and there in such employ as conductors on the cars of said body corporate; and that in the business of said body corporate certain tickets were used, each of which entitled the holder thereof to one ride over one of said lines or to one ride over parts of two of said lines; and that six of said tickets were sold by said body corporate through the conductors aforesaid and other conductors of the said body corporate, for the sum of twenty-five cents; and that the price of each single such ride when paid in money was five cents; and that the collections of moneys and of tickets from passengers on the said lines by the conductors of such body corporate were required to be registered by the conductors of the said body corporate at the time of the making of such collections, on a machine in the cars upon which such collections were made; and that the conductors of the said body corporate upon the collection of such tickets from passengers were required to immediately cut a hole in them, such last-mentioned tickets, with a certain instrument called a punch; and that such collections of moneys and of tickets so punched by the conductors of the said body corporate were required to be turned over by them to other servants and agents of the said body corporate at its office in the said car-house; and that such collections of moneys and of
9 tickets from passengers in each instance were required to agree with the showing made in that respect by the said machine; and that thereupon the said tickets so turned over were arranged in bundles by other servants and agents of said body corporate, and by them such last-mentioned servants and agents put in the said furnace to be destroyed by fire, so as to prevent them from being used again in any manner in the business of said body corporate; and that it was within the power of the said Cadarr as such engineer to so adjust the strength of the fire in

said furnace that when such bundles of tickets were so placed therein for destruction, many of such last-mentioned tickets could be subsequently removed from such furnace in an undamaged or slightly damaged condition, and that any conductor in the employ of said body corporate might if so disposed purposely refrain from making a hole with a punch as aforesaid, in tickets actually collected by him, such conductor last aforesaid, from passengers on cars of the said body corporate, and having in the possession of him, such conductor last aforesaid, such undamaged and slightly damaged tickets might in his accountings with the said body corporate for such collections of tickets last aforesaid, substitute such undamaged and slightly damaged tickets for tickets actually so collected by him such conductor last aforesaid, and retain the tickets actually so collected by him; and might also in his collections from such passengers of fares in money register such money collections as collections of tickets on said machine, and thereby and by returning in his said accountings with the said body corporate such undamaged or slightly damaged tickets in lieu of moneys collected by him for fares of passengers, and by sales of the said unpunched and retained tickets be enabled to defraud the said body corporate of large sums of money.

And the grand jurors aforesaid, upon their oath aforesaid, do further present: That the said George E. Cadarr, the said Edward Parker, the said John J. Keating and the said John N. Myers, well knowing the premises aforesaid, and scheming and designing to impose upon and to defraud the said body corporate of its moneys, on the twenty-second day of April in the year of our Lord one thousand nine hundred and one, and at the District aforesaid, unlawfully did combine, conspire, confederate, and agree together to obtain and acquire to themselves from the said body corporate large sums of the moneys of the said body corporate, and cheat the said body corporate of the same, and to accomplish said object in the manner following, that is to say, that he, the said George E. Cadarr, should upon occasions when such tickets should be so placed in said furnace for destruction as aforesaid, so adjust the fires of the said furnace that many of such last-mentioned tickets could be subsequently removed from the said furnace by him, said Cadarr, in an undamaged or slightly damaged condition, and that he, said Cadarr, should so remove them, the tickets last aforesaid, and that after such removal of such tickets from said furnace, he, the said Cadarr, should deliver certain of the tickets last aforesaid, which were in an undamaged or slightly damaged
10 condition, to the above-named conductors and other conductors of the said body corporate, and receive therefor from the said above-named conductors and the other conductors last aforesaid, certain sums of money to be agreed upon between him and them, in exchange for such last-metioned tickets; and that thereafter the said Parker, the said Keating, and the said Myers, in accounting with the said body corporate for sums of money and for such car tickets collected by them respectively from passengers on the cars of said body corporate of which they, the conductors last aforesaid, respectively, had charge, should return to the servants and agents of the said body corporate, in such accountings, car tickets so received by them, the conductors last aforesaid, from said Cadarr in lieu of moneys collected by them respectively from such passengers and of tickets collected by them respectively from passengers

and retain and convert to the respective uses of them, the said Parker, the said Keating, and the said Myers, such last-mentioned moneys and tickets, and thereby defraud the said company of large sums of money.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the day and year aforesaid, certain car tickets of the said body corporate were returned by the conductors aforesaid to the said body corporate in such accountings with the said body corporate, and that the tickets last aforesaid were arranged in bundles and placed in the said furnace for destruction; and that the said Cadarr did then and there, to wit, on the day and year aforesaid and at the District aforesaid, and in pursuance of the said unlawful combination, conspiracy, confederation, and agreement, and in the execution thereof and to effect the object of the same, so adjust the fire in said furnace that many of the said last-mentioned tickets should be undamaged or slightly damaged; and that he, the said Cadarr, in further pursuance of the said unlawful combination, conspiracy, confederation, and agreement, and in the further execution thereof and to further effect the object of the same, did on the day and year aforesaid and at the District aforesaid remove from the said furnace many, to wit, one thousand, of the tickets last aforesaid, in an undamaged or slightly damaged condition; and that he, said Cadarr, in further pursuance of the said unlawful combination, conspiracy, confederation, and agreement and in the further execution thereof and to further effect the object of the same, did then and there deliver to the said Parker a great number, to wit, one hundred, of the tickets last aforesaid; against the form of the statute in such case made and provided, and against the peace and Government of the said United States.

ASHLEY M. GOULD,
*Attorney of the United States in and for the District of Columbia.*

(Endorsed:) No. 22917. United States vs. George E. Cadarr, Edward Parker, John J. Keating, and John N. Myers. Conspiracy. Witnesses: George H. Harries, M. R. Muller, M. P., George W. Boyd, M. P. J. C. Daley, M. P., Henry Lacy, M. P., Richard Williams. A true bill. George W. Linkins, foreman.

11 *Arraignment of Cadarr, Keating, and Myers.*

SUPREME COURT OF THE DISTRICT OF COLUMBIA,
*Friday, April 4, 1902.*

The court resumes its session pursuant to adjournment, Mr. Justice Anderson, presiding.

* * * * * * *

| | |
|---|---|
| UNITED STATES<br>*vs.*<br>GEORGE E. CADARR, JOHN J. Keating, and John N. Myers. | No. 22917. Indicted for conspiracy. |

Come as well the attorney of the United States as the defendants in proper person according to their recognizance; and, thereupon, the defendants being arraigned upon the indictment, they each plead thereto not guilty and for trial put themselves upon the country and the attorney of the United States doth the like.

*Arraignment of Edward Parker.*

SUPREME COURT OF THE DISTRICT OF COLUMBIA,
*Monday, April 7, 1902.*

The court resumes its session pursuant to adjournment, Mr. Justice Anderson, presiding.

* * * * * * *

UNITED STATES, }
*vs.* } No. 22917. Indicted for conspiracy.
EDWARD PARKER. }

Come as well the attorney of the United States as the defendant in proper person according to his recognizance; and, thereupon, the defendant being arraigned upon the indictment he pleads thereto not guilty and for trial puts himself upon the country and the attorney of the United States doth the like.

12 *Plea of not guilty withdrawn and motion to quash filed.*

SUPREME COURT OF THE DISTRICT OF COLUMBIA,
*Thursday, May 1, 1902.*

The court resumes its session pursuant to adjournment, Mr. Justice Anderson, presiding.

* * * * * * *

UNITED STATES, }
*vs.* } No. 22917. Indicted for conspiracy.
EDWARD PARKER. }

Now comes here the defendant by his attorneys, Messrs. H. P. Gatley and Joseph Shillington, and withdraws his plea of not guilty and files a motion to quash the said indictment.

*Motion to quash indictment—Filed in open court May 1, 1902.*

In the supreme court of the District of Columbia, holding a criminal court.

UNITED STATES, }
*vs.* } Criminal No. . Indicted for conspiracy.
EDWARD PARKER ET AL. }

Now comes the defendant Edward Parker, by his attorneys, H. Prescott Gatley and Joseph Shillington, and moves the court to quash the indictment herein exhibited against him for the following reasons:

1. Because the said indictment was not returned into court within nine months after the 25th day of April, A. D. 1901, on which said day this defendant was held to bail to await the action of the grand jury on said charge of conspiracy; the time for taking action in said case not having been enlarged by this court, or any justice thereof (as appears from the record herein), as provided by section 939 of the act to establish a code of law for the District of Columbia, approved March 3, 1901.

2. Because of other errors, defects, and omissions appearing on the face of the record in this cause.

H. PRESCOTT GATLEY,
JOSEPH SHILLINGTON,
*Attorneys for Defendant Edward Parker.*

13 SUPREME COURT OF THE DISTRICT OF COLUMBIA,
*Saturday, April 25, 1903.*

The court resumes its session pursuant to adjournment, Mr. Justice Anderson, presiding.

* * * * * * *

UNITED STATES
*vs.*
GEORGE E. CADARR, EDWARD PARKER, John J. Keating, and John N. Myers.
No. 22917. Indicted for conspiracy.

Come as well the attorney of the United States as the defendants, defendant Edward Parker by his attorney H. P. Gatley, esq.; and thereupon defendant Edward Parker's motion to discharge the bail in this cause coming on to be heard and argued by counsel, it is ordered by the court that the said motion be and the same is hereby granted and that the said bail be and is hereby discharged for the reasons assigned in support of the said motion and under the provisions of section 939 of the act of Congress establishing a code for the District of Columbia, and that from the said indictment the said defendants and each of them go thereof without day; whereupon the U. S. attorney prays in open court an appeal to the court of appeals of the District of Columbia from the order of the court granting the said motion.

Supreme court of the District of Columbia.

UNITED STATES OF AMERICA,
*District of Columbia, ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 15, inclusive, to be a true and correct transcript of the record, as per rule 5 of the court of appeals of the District of Columbia, in cause No. 22917, criminal, United States vs. George E. Cadarr et al., as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 27 day of May, A. D. 1903.

[Seal supreme court of the District of Columbia.]

JOHN R. YOUNG, *Clerk*

(Endorsed on cover:) District of Columbia supreme court. No. 1325. The United States, appellant, vs. George E. Cadarr et al. Court of appeals, District of Columbia. Filed May 28, 1903. Robert Willett, clerk.

14 THURSDAY, *April 7th, A. D. 1904.*

THE UNITED STATES, APPELLANT,
*vs.*
GEORGE E. CADARR, EDWARD PARKER, John J. Keating, and John N. Myers. } No. 1325.

THE UNITED STATES, APPELLANT,
*vs.*
LANCELOT A. HARTMAN. } No. 1326.

THE UNITED STATES OF AMERICA, appellant,
*vs.*
CHARLES A. HAYMAN. } No. 1353.

On motion, the appellee in No. 1326 is allowed until Tuesday next in which to file brief herein.

The argument in the above-entitled causes was commenced by Mr. C. A. Keigwin, attorney for the appellant, and was continued by Mr. R. R. Horner, attorney for the appellee in No. 1353, and by Mr. T. M. Fields, attorney for the appellee in No. 1326, and was concluded by Mr. C. A. Keigwin, attorney for the appellant.

15 THE UNITED STATES, APPELLANT,
*vs.*
GEORGE E. CADARR, EDWARD PARKER, John J. Keating, and John N. Myers. } No. 1325.

OPINION.

Mr. Justice Wright, of the supreme court of the District of Columbia, who sat with the court in the absence of Mr. Chief Justice Alvey, delivered the opinion of the court:

Upon April 25th, 1901, the appellees were arrested upon a charge of conspiracy to defraud, on warrant issued out of the police court of the District of Columbia. Upon the same day each pleaded "not guilty" and was held to bail to await the action of the grand jury. Parker and Keating were admitted to bail upon April 27, 1901, Cadarr and Myers on May 7th, 1901, they having been committed meanwhile. No further proceedings were had against any of them until March 31, 1902, on which day, more than eleven months after the holding over, the grand jury returned into the supreme court of the District of Columbia an indictment charging them jointly as in the original affidavit.

16 Upon April 4th, 1902, Cadarr, Keating, and Myers each pleaded "not guilty," as did Parker upon April 7th. On May 1st, 1902, Parker withdrew his plea of not guilty and *and* filed a motion to quash the indictment, basing his motion upon the provisions of section 939 of the District Code, which are as follows:

"Sec. 939. Abandonment of prosecution: If any person charged with a criminal offense shall have been committed or held to bail to await the action of the grand jury, and within nine months thereafter the grand

jury shall not have taken action on the case, either by ignoring the charge or by returning an indictment in the proper court, the prosecution of such charge shall be deemed to have been abandoned and the accused shall be set free or his bail discharged, as the case may be: Provided, however, that the supreme court of the District of Columbia, holding a special term as a criminal court, or, in vacation, any justice of said court, upon good cause shown in writing, and, when practicable, upon due notice to to the accused, may from time to time enlarge the time for the taking action in such case by the grand jury."

This motion was found by the court to be well taken, was sustained, and each of the defendants was discharged from the indictment without day. The case is here upon appeal from this order.

Although the plea of not guilty was technically withdrawn by only Parker, yet it is manifest from the general nature of the discharge that the situation below was such that the others were availing themselves of Parker's motion, although without the formal withdrawal of their pleas, and that the court below so regarded it.

It is suggested that appeal by the United States does not lie. Code, section 934, provides, "In all criminal prosecutions the United States * * * shall have the same right of appeal that is given to the defendant * * * *;" the right of appeal given to the defendant according to section 226 is from "any final order, judgment, or decree of the supreme court of the District of Columbia;" the order appealed from at bar discharged the appellees from the indictment without day, was therefore a final order and the appeal is properly here.

It is contended by Mr. United States Attorney that the section 939 does not apply to the case at bar for the reason, as he says, that the offense charged was committed prior to its enactment. The code was passed March 30, 1901, and came into effect January 1st, 1902. The appellees were arrested on April 25th, 1901, and the same day were held to await the action of the grand jury and gave bond. When the code became operative January 1, 1902, the charge was pending.

It is urged that "upon the familiar rule that statutes are construed to operate upon future matters and not retrospectively, section 939 can have no effect upon these prosecutions;" "these prosecutions" were not yet passed, but present and future, with respect to the time when the statute became operative; had been inaugurated before, pended at the time, and appear to be still continuing, at least according to the proceeding at bar; so that the propriety of applying the rule to which we are invited is not manifest to a degree of clearness which is calculated to make it attractive. That which is not yet come to its end is still of the present; and so with a prosecution which the code, when coming to be the operative law, found in existence; section 939 does not directly deal with substantive offenses, but only with criminal charges which are endeavored to be formulated upon them. If it be questioned, does section 939 reach back to a prior offense? It is answered, no; but section 939 takes hold upon current prosecutions of past offenses, prosecutions which coexist with it, and if its effect upon prosecution as distinguished from the offense is such that prosecutions are at length prohibited, judicial inquiry into the offense as such is likewise at an end. So that the question of retroactive operation of statutes is not here, and we are at no need for discussing it.

The question is this, does the code apply to proceedings which were pending when it took effect? Congress itself, through section 1638, speaks thus: "* * * Provided, That the provisions of this code relating to procedure or practice and not affecting the substantial rights of parties shall apply to pending suits or proceedings, civil or criminal."

What is the legal significance of the word "procedure?" "The law defines the rights which it will aid, and specifies the way in which it will aid them. So far as it defines, thereby creating, it is 'substantive law.' So for as it provides a method of aiding and protecting, it is 'adjective law,' or 'procedure.'" Holland Jur., p. 78.

"The word 'procedure' as a law term is not well understood. Fortunately, a distinguished writer on criminal law in America has adopted it as the title to a work—Bishop on Criminal Procedure. In his first chapter he undertakes to define what is meant by procedure. He says: 'Sec. 2. The term "procedure" is so broad in its signification that it is seldom employed in our books as a term of art. It includes in its meaning whatever is embraced by the three technical terms, pleading, evidence, and practice.' And in defining practice, in this sense, he says: 'The word means those legal rules which direct the course of proceeding to bring parties into the court and the course of the court after they are brought in.'" Kring v. Missouri, 107 U. S., 231–2.

The term procedure is said by Lush, L. J., to denote "the mode of proceeding by which a legal right is enforced, as distinguished from the law which gives or defines the right, and which by means of the proceeding the court is to administer; the machinery as distinguished from the product." Poyser v. Minors, L. R., 7 Q. B. D., 329–333.

"Adjective criminal law, penal procedure, is the body of rules whereby the machinery of the courts is set in motion for the punishment of offenders. It consists usually of two species, a simpler, applicable * * * only to trifling transgressions, and a more solemn for the trial of serious crimes. Each of these consists of several stages, having a strong resemblance to the stages of procedure in private law. In the more solemn procedure we may distinguish—

I. The choice of the proper jurisdiction.

II. The choice of the proper court.

III. The procedure proper, consisting of—

17 1. The summons by which the accused is called upon, or the warrant under which he is compelled to appear to answer the charge.

2. The preliminary investigation, terminating in the discharge of the accused or in his being committed for trial.

3. The measures insuring that the accused shall be forthcoming for trial, viz, either imprisonment or security, given either by himself or his friends.

4. The pleadings by which on the one hand the prosecution informs the court and the accused of the nature of the charge against him, and, on the other hand, the accused states the nature of his defense, etc." Hol. Jur., pp., 334–335.

The section of the Code under consideration points out the next step appropriate to be taken in the cases of persons bailed or imprisoned without the formal pleading against them returned to the court during

nine months, and therefore relates to procedure. Neither does the section affect the "substantial rights" of the United States, for it does not affect its right to punish offenses, but only regulates the time in which the right shall be exercised. Substantial rights are those the violation of which gives rise to a remedy rather than the peculiar process through which the remedy is attained. So long as the right is not deprived of its remedy the substance of the matter is not affected by a change in the duration of stages and steps which in any event must be passed on the way to the remedy. Concerning these there are no vested rights.

"Alterations which do not increase the punishment, nor change the ingredients of the offense or the ultimate facts necessary to establish guilt, but—leaving untouched the nature of the crime and the amount or degree of proof essential to conviction—only remove existing restrictions upon the competency of certain classes of persons as witnesses, relate to modes of procedure only, in which no one can be said to have a vested right, and which the State, upon grounds of public policy, may regulate at pleasure." Hopt. v. Utah, 110 U. S., 574–590.

By differentiating questions of "procedure" from those of "substantial rights," Congress has by the very act pointed out that questions which turn out to be of procedure are thereby removed from the realm of substantial rights, at least for the purposes of the particular statute under consideration. The act applied to the prosecutions at bar; and as to its meaning the section concerns that step in the progress of a criminal prosecution which intervenes between the termination of proceedings in examining tribunals, and the inauguration of proceedings in the tribunal of final jurisdiction; the latter is accomplished by the return into court of an indictment found by the grand jury. The section has nothing to do with hastening trial after indictment, for its provisions relate only to absence of indictment; "and within nine months thereafter the grand jury shall not have taken action on the case, either by ignoring the charge or by returning an indictment into the proper court, the prosecution of such charge shall be deemed to have been abandoned and the accused shall be set free or his bail discharged, as the case may be. * * *"

The phraseology "shall be set free or his bail discharged" is susceptible of two meanings: Either, 1st, that he shall be set forever free from the substantive offense charged; or, 2d, that he shall be set free from only the specific charge of it then pending, and not free from the substance of the offense.

The first of the two constructions would altogether bar future indictment and trial; the second would sanction rearrest, indictment, and trial, even after a discharge had, on account of the expiration of nine months without action.

The question is, which of the two meanings expresses the intention of Congress?

If, in order to recognize that one which is the more agreeable to reason, it be needful to proceed further than merely to state the two, the qualifying language of the section supplies indicia in the presence of which we find our minds unable to perceive that there is room for any doubt of the matter; and we proceed to point out some of the reasons which appear to us.

First. It is not all cases of no indictment within nine months which the statute reaches, but only those charges which are neither ignored within nine months nor returned indicted within nine months; with these only does the statute deal, leaving those ignored within nine months and those indicted within nine months still in the operation of the common law and unaffected by the statute; the statute embraces only those whereon "the grand jury shall not have taken action" one way or the other.

This is a differentiation between all cases, and some cases, with the statute applying only to some; and whatever construction be assigned the statute, its meaning can have no relation to charges ignored within nine months, and no relation to charges indicted within nine months, for these are exempted from the operation of the statute.

According to the common law, cases ignored and cases indicted are both subject to new inquisition and further indictment by grand jury, and such is the situation in which are left the cases exempted from the operation of the statute at bar.

Now it occurs to us that if the second meaning be assigned the statute—we mean that construction which permits future indictment after nine months of the cases operated upon by the statute, as well as those not operated upon—we shall behold upon the part of Congress a painstaking discrimination of all criminal charges into two classes, one wherein action is had within nine months; the other, no action within nine months; one class exempted from the operation of the statute and left so that indictment may be had after nine months, according to the common law; the other class within the operation of the statute, and yet with but the same result that in this class, too, indictment may be had after nine months; a division into classes for the purpose of legislation; an exemption of one class from the legislation; legislation for the other class, and yet the law turns out the same for both. The law for the class legislated upon remains the same as the law for the class not legislated upon,
legislation had, but the law upon the point of the legislation
18 remains the same as it was before legislation, but no change in
the law.

Second. It is provided in the section that the criminal term of the supreme court of the District, or in vacation of any of its justices, "upon good cause shown in writing, may from time to time enlarge the time for taking action in such case by the grand jury."

If the second meaning be attached to the statute, to wit, that the discharge is only from the pending prosecution, this proviso turns out not only unnecessary but idle and useless; for if the discharge is only from the pending accusation, this leaves the grand jury already free to indict at a later period, because, according to the construction, it has never been deprived of that power. There is neither need nor reason for vesting in the court power to extend the time for action if action may be had independent of any extension; the fact that power to extend the time for action is conferred, and is to be granted only "upon good cause shown in writing," shows the legislative mind to have understood that unless there was extension, the time for action has finally expired with the nine months.

Third. As suggested, supra, the second construction would sanction the rearrest and recommitment for a second period of nine months, upon

a second charge of the same offense, immediately upon being once set free after the first nine months; not only for a second nine months after the first nine months, but a third after a second, and so ad infinitum. Now, if this be the case, the entire statute accomplished no more than to require the vain ceremony of a discharge from incarceration to-day, and a recommitment upon a duplicate affidavit and warrant to-morrow; a discharge of bail on one day, and a reacceptance of the same surety upon a duplicate bond the next day. Now, it is not in reason to say that legislatures concern themselves with mere idle projects; on the other hand, when an act is susceptible of two constructions, of which the one will accomplish a very reasonable enforcement of a constitutional right of the citizen, and of which the other will accomplish only an idle repetition of a useless ceremony which leaves the right inoperative, and when the subject of the legislation is within the orbit of the constitutional right, it ought to need but scant argument to identify which of the two constructions effects the legislative intent. The statute was enacted in the light and under the operation of the sixth amendment of the Federal Constitution, and if the two are read together, as they must be, the Constitution providing that "In all criminal prosecutions the accused shall enjoy the right to a speedy" trial, and the statute providing that an accused who for nine months is held in custody or under bail with no step taken in the prosecution shall be discharged, it seems right clear that the act was intended in aid of the operation of the Constitution, and to make effective its guarantee.

If such was the purpose of Congress, and we find ourselves of that opinion, the purpose can be made effective only by according to the discharge an effect which relieves the accused from further accountability for the substance of the offense, and not only from the pending prosecution, for, if he be discharged only from the pending prosecution during one moment and left subject to the inauguration of a second prosecution at the next, and a third after a discharge from the second, the statute is eviscerated of the purpose which predicates its enactment. It was argued that this construction would accomplish a general jail delivery of the guilty. But shall courts assume to pronounce men guilty before they are tried or even indicted? The law operates for the innocent and for the guilty alike, until the identity of the guilty is ascertained by due process of law; neither the innocent nor the guilty ought to be indefinitely restrained in custody or under bail, and the constitutional rights of even the guilty are to be respected; indeed, if surmise is to be indulged in, it is not destructive of penal procedure to hazard the assumption that the one against whom, in nine months, no evidence sufficient to base an indictment is submitted, is as likely to be innocent as guilty.

If the legislative purpose was not that the discharge should be final, but merely current, the only alternative purpose fit to be ascribed to Congress was a purpose to accommodate freedom from incarceration for those continuing nine months in custody; but the possibility of the existence of this as the purpose is eliminated by considering that the act applies as well to those who never were in custody but only bailed. If this latter purpose underlay the enactment, even it is destroyed by the construction suggested by the United States attorney, for not even freedom from incarceration would be accommodated by returning an accused into jail as often as he was turned out.

So that the discharge contemplated must be final, or the statute conceded no effect at all.

It is said that the construction which we find appropriate would accomplish a repeal of the general statute of limitations, R. S., sec. 1044, which provides that no person shall be prosecuted unless the indictment is found within three years next after the commission of the offense; the general statute operates with respect to the time of the offense, independent of the time of holding the accused to await the action of the grand jury; the section at bar operates with respect to the time of holding the accused to await action of the grand jury, and independent of the time of the offense. Their respective provisions are harmonious, and might without conflict be incorporated together into a single section, as in effect they must be when read together; the effect of the two is to declare that "no person shall be prosecuted unless the indictment is found within three years next after the offense shall have been committed, and all persons who, after the inauguration of prosecution, are for nine months held in custody or under bail to await action of the grand jury, without action by the grand jury, shall be finally discharged." It has not been conceived that the statute which requires the perfecting within six days of civil appeals from justices of the peace repealed the general statute of limitations upon the subject of civil actions, and the analogy seems accurate.

It is contended that even though the section be held to apply to pending cases, yet nine months must be reckoned from January 1st, 1902, when the Code took effect, and not from the
19 time of commitment or bail in particular cases, but this would in effect maintain that the act did not apply to pending prosecutions, for in order to apply it to a prosecution it must be given effect in that prosecution by working a discharge in that very case, after the expiration of nine months from the time of commitment or bail; if it be not given this effect it has not been applied. The only limitation to be put upon its operation upon pending cases grows out of the established rule that statutes in the nature of limitations which affect existing rights should afford a reasonable time for the commencement of an action before the bar takes effect. Terry v. Anderson, 95 U. S. 628; Koshkonong v. Burton, 104 U. S. 668.

At bar the requirements of the rule were fully satisfied, for by the passage of the Code, March 30th, 1901, the Government was put upon notice of a change in the law to become effective January 1st, 1902; the appellees having been arrested upon April 25, 1901, the opportunity to indict them which the new legislation afforded continued through eight months in 1901 and one month of 1902; appellee was not indicted until March 31st, 1902, longer than eleven months after being held to bail, and more than a full year after the Government had been put upon notice of the nine months' limitation. The question is not so much whether the time intervening between the taking effect of the law and the operation of the bar afforded reasonable opportunity, as it is whether the time intervening between the enactment of the law and the operation of the bar affords reasonable opportunity. The fact that the law was enacted to take effect a considerable time in future is evidence enough that Congress ordained the period in order to afford the opportunity, and esteemed that the opportunity afforded was reasonable. When it is provided that an

act shall take effect at a date appreciably later than its passage, the question of reasonable time is to be determined by reckoning from the date of passage, not from the date at which the act takes effect. Duncan v. Cobb, 32 Minn. 460; State v. Jones, 21 Md. 432; Wrightman v. Boone County, 82 F. 412; Hedger v. Rennaker, 3 Met. (Ky.) 255; Ross v. Duval, 13 Pet. 45.

It is contended that in order to make available whatever right the section gave, an accused can avail himself of it only by moving his discharge prior to the return of an indictment; that if, in fact, an indictment be returned after nine months and no application for discharge meanwhile, that he is too late, after the indictment.

If by the lapse of time a right accrued in a defendant, who but himself can nullify the right? There is no way at all, unless through his voluntary waiver of it or through an estoppel; and there is here no field for estoppel, for the Government was uninfluenced by his quiescence. So that his right was there unless he had waived it; if he had, it was gone. Being without access to the deliberations of the grand jury or its proceedings, he was chargeable with no notice that they had during nine months taken no action upon his case, and there can be no waiver of a point concerning which he is not only ignorant in fact, but concerning which he is free from the implication of knowledge, either actual or constructive. He was bailed, and was as well justified to believe that the charge had been ignored as that it had been suffered to slumber; indeed more, for he had a right to expect that the requirements of the law would be respected, both concerning action on his case within nine months, as as well as concerning a showing of good cause in writing and an enlargement of time by the court, if it was expected to act on his case after nine months.

His right needed no action on his part for its existence. Neither was there any necessity for its affirmative enforcement until some interference with it developed. None ever did develop until the indictment was filed. If his plea of not guilty was with the intention to waive his right of discharge and stand his trial, the court below might, with propriety, have held him to it and put him upon his trial. If his plea was inadvertent, and not with the intent to waive the right to a discharge, the court might, with propriety, have permitted the withdrawal of the plea and remitted him to his original right. The withdrawal of the plea of not guilty was for the discretion of the trial court, and the exercise of this discretion to the end of permitting the withdrawal and thereby the elimination of the plea concludes the question of a waiver through making the plea, for with the plea gone out of consideration it amounts to nothing. The judgment of the court below was right and is affirmed.

20 THURSDAY, *June 30th, A. D. 1904.*

THE UNITED STATES, APPELLANT,
*vs.*
GEORGE E. CADARR, EDWARD PARKER, John J. Keating, and John N. Myers. } No. 1325. April term, 1904.

Appeal from the supreme court of the District of Columbia. This cause came on to be heard on the transcript of the record from the

supreme court of the District of Columbia, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said supreme court in this cause be, and the same is hereby, affirmed.

Per Mr. JUSTICE WRIGHT.

JUNE 30, 1904.

21 Court of appeals of the District of Columbia.

I, Henry W. Hodges, clerk of the court of appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 20, inclusive, contain a true copy of the transcript of record and proceedings of said court of appeals in the case of the United States, appellant, vs. George E. Cadarr, Edward Parker, John J. Keating, and John N. Myers. No. 1325. April term, 1904, as the same remain upon the files and records of said court of appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said court of appeals, at the city of Washington, this 8th day of November, A. D. 1904.

[SEAL.] HENRY W. HODGES,
*Clerk of the Court of Appeals of the District of Columbia.*

22 UNITED STATES OF AMERICA, ss.

*The President of the United States of America to the honorable the judges of the court of appeals of the District of Columbia, greeting:*

Being informed that there is now pending before you a suit in which the United States is appellant and George E. Cadarr, Edward Parker, John J. Keating, and John N. Myers are appellees, which suit was removed into the said court of appeals by virtue of an appeal from the supreme court of the District of Columbia, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said court of appeals and removed into

23 the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the seventh day of December, in the year of our Lord one thousand nine hundred and four.

JAMES H. MCKENNEY,
*Clerk of the Supreme Court of the United States.*

24 (Indorsed:) File No. 19538. Supreme Court of the United States. No. 438, October term, 1904. The United States *vs.* George E. Cadarr et al. Writ of certiorari.

25 Supreme Court of the United States.

THE UNITED STATES, PETITIONER,
*vs.*
GEORGE E. CADARR ET AL.
} No. 438, October term, 1904.

On consideration of the motion that the transcript of record filed as an exhibit to the petition for a writ of certiorari herein be taken as a return to said writ,

It is now here ordered by the court that said motion be, and the same is hereby, granted.

JANUARY 30, 1905.

26 (Indorsed:) File No. 19530. Supreme Court of the United States. October term, 1904. Term No. 430. Order. Filed Jan. 30, 1905.